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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/022,313

12/17/2001

Aziz Rassi Neto

P-6

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07/27/2004

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EXAMINER

DAVIS, DANIEL J

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/022,313	Applicant(s) NETO, AZIZ RASSI	
	Examiner D. Jacob Davis	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,002,445 to Fischer in view of U.S. Patent No. 2,381,050 to Hardinge. In Fig. 1, Fischer discloses an anchor or expandable element 1 comprising an expandable element 1 comprising a threaded axial bore 10 having a distal end that "undergoes a funneling defining a threaded trunk sector," slots 18, and a trunk configuration. The device further comprises a spindle 2 having a hexagonal cavity in the head of the spindle.

Fischer fails to disclose that the device is a screw, i.e., that the expandable member 1 has external threads. However, Hardinge teaches the use of external threads to enhance the gripping capability of the exterior surface of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place external threads on the Fischer anchor 1 as taught by Hardinge in order to enhance the gripping capability of the exterior surface of the device.

The recitation of the intended use of the device as a “surgical screw for recomposition of human bone structures” is not deemed to overcome the Fischer/Hardinge references since the device is fully capable of performing the recited function.

Claims 1-5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,381,050 to Hardinge in view of U.S. Patent No. 5,002,445 to Fischer. Hardinge discloses a surgical screw in Figs. 5-6 comprising an expandable element, a “funneling defining a threaded trunk sector,” and an expandable element having slots along a portion of the distal end. The device further comprises a spindle 26 having a head and a slot to receive a tool. Hardinge fails to disclose that the funneling portion of the bore of the surgical screw 6 is threaded. Nevertheless, Fischer teaches an internally threaded bore on the funneling portion of the anchor. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Hardinge device as taught by Fischer in order to improve the gripping interaction between the anchor 6 and the spindle 26. Fig. 5 illustrates a trunk configuration. The slots of span about one-half of the expandable element.

The embodiment of Fig. 5 fails to disclose a radial indenture. Nevertheless, Fig. 3 teaches a radial indenture 23 enabling a screwdriver to engage the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the embodiment of Fig. 5 to include a radial indenture 23 enabling a screwdriver to engage the device.

Regarding claim 4, the embodiment of Fig. 5 fails to disclose external threads that span the entire length of the expandable element 6. Fig. 3 teaches threads that span the entire length of the expandable element 6. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the embodiment of Fig. 5 as taught by Fig. 3 to make the threads span the entire length of the expandable member 6 in order to enhance the grip with member 13.

Response to Arguments

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new grounds of rejection. Applicant amended to overcome the rejection under 35 U.S.C. 112. Applicant further amended to broaden the scope of the claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on (703) 308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD
July 22, 2004



JULIAN W. WOO
PRIMARY EXAMINER